MALICIOUS PROSECUTION OF A CIVIL SUIT WITHOUT ARREST OR ATTACHMENT. — In *Savile* v. *Roberts*, 1 Ld. Raym. 374, Lord Holt laid down the proposition that any one of three sorts of damage would support an action for malicious prosecution, namely, damage to a man's fame, to his person, or to his property. That a prosecution for a crime, which involves the first sort of damage, the bringing of a civil suit with arrest of the person, which involves the second, and the bringing of a civil suit with attachment of property, which involves the third, are actionable if induced by malice and without reasonable cause, is universally admitted. But where a civil suit is unaccompanied by arrest of the defendant's person, or attachment of his property, it has often, perhaps generally, been held that the law must regard the costs which the defendant recovers as a sufficient recompense, and that he can bring no action for malicious prosecution. See the opinion of Bowen, L. J., in *Quartz Hill Gold Mining Co.* v. *Eyre*, L. R. 11 Q. B. D. 674, 689; *Potts* v. *Imlay*, 1 South. 330; *Wetmore* v. *Mellinger*, 64 Iowa, 741. On the other hand, in *Lipscomb* v. *Shofner*, 33 S. W. Rep. 818, the Tennessee court recently held that an action would lie under such circumstances, and this decision finds considerable support in this country. See *Closson* v. *Staples*, 42 Vt. 209; *Eastin* v. *Bank of Stockton*, 66 Cal. 123; *Woods* v. *Finnell*, 13 Bush, 628.

It is generally admitted that some action of this nature lay at common law. But since the Statute of Marlbridge (52 Hen. III.), which allowed costs to successful defendants *pro falso clamore*, no such action has been sustained by the English courts. Those costs apparently include "the attorney's charges for preparing the case for trial in all its parts, the fees of the witnesses and the court officials, and even the *honorarium* of the barrister who conducted the case in court." 21 Am. Law Reg. N. S. 370. In this country costs are much more sparingly allowed, and are often far from a recompense for the damage sustained. It is on this ground that many of the American courts have allowed the action. Their conclusion certainly seems logical, and in accord with the general principle on which the action for malicious prosecution is based. Manifestly, in the expense to which he is put the defendant suffers damage of a sort covered by Lord Holt's analysis; and if that damage, resulting as a natural consequence of the plaintiff's malicious act, exceeds the amount of costs given under a system which makes no attempt at complete compensation, the defendant should be allowed to make good the loss by another action. The main argument against allowing it, that it would encourage interminable litigation, hardly seems conclusive. See, for a full discussion of the subject, 21 Am. Law. Reg. N. S. 281, 353.

GENERIC AND SPECIFIC PATENTS. — A recent case decided by Judge Townsend in the second circuit, *Thomson-Houston Electric Co.* v. *Winchester Ave. Ry. Co.*, 71 Fed. Rep. 192, brings up the question how far an inventor is bound by the acts of the patent office in delaying an application filed by him. This point was passed upon in *Miller* v. *Eagle Mfg. Co.*, 151 U. S. 186, where the facts were as follows: An application for a patent being put into interference by the office was divided by the applicant. A patent was granted on the divisional application for a part of the invention. Subsequently the interference was decided in favor of the applicant, and a second patent was granted him for the rest of the invention. The drawings of both patents were identical and the specifi-

cations similar; the claims of the first patent covered one function of a combination, those of the second patent another function of the same combination. The Supreme Court in an opinion delivered by Mr. Justice Jackson held that the entire invention was disclosed by the first patent, and the second patent was void for lack of novelty.

The injustice of a decision which deprives an inventor of the fruits of his genius on account of delay by the Patent Office has been generally recognized. In the case first cited Judge Townsend refused to follow *Miller* v. *Eagle Mfg. Co.* The patent in suit was the one covering the overhead trolley system of electric railways which has gone into such general use in this country. The inventor filed an application covering the invention broadly, and while this was pending he took out a patent for a special form of trolley. The broad patent granted afterward was attacked for lack of novelty, but the court upheld it. The patents covered different devices so that the precise question of the *Miller* case did not arise, but the opinion is interesting as showing a tendency to restrict the scope of that decision. A similar decision was reached by Judge Coxe in *Thomson-Houston Co.* v. *E. & H. Ry. Co.*, 69 Fed. Rep. 257, which involved the same patent.

In the following cases *Miller* v. *Eagle Mfg. Co.* was distinguished or cited for a narrow doctrine: *Gamewell Co.* v. *Signal Co.*, 61 Fed. Rep. 948; *U. S.* v. *Bell Tel. Co.*, 65 Fed. Rep. 86; *Reynolds* v. *Paint Co.*, 68 Fed. Rep. 483; *Bell Tel. Co.* v. *U. S.*, 68 Fed. Rep. 542. The case has been followed only once, in *Fasset* v. *Ewart Mfg. Co.*, 62 Fed. Rep. 404, where the facts were similar, and there was the additional circumstance that the inventor attempted by the second patent to prolong his monopoly.

On the whole it may be said that the case will be followed only when the facts are similar or when the inventor has not acted in good faith, and that no attempt to extend the scope of the doctrine will be favored by the courts. This view is supported by the opinion of the Court of Appeals for the Second Circuit in *Thomson-Houston Co.* v. *E. & H. Ry. Co.*, 71 Fed. Rep. 396, on appeal from the decision of Judge Coxe. The court, Wallace, J., at p. 405, says: "Some observations in *Miller* v. *Mfg. Co.* seem to have created some misapprehension of the scope of that decision on the part of the profession, but the principles enunciated in the opinion are so plainly stated that those observations when considered in their application to the case before the court, ought not to be misconceived. The court decided in that case that the two patents . . . were in fact for the same invention, and consequently the later patent was void." This is the latest expression of opinion on the subject, and, coming from such a high authority, may be taken as conclusive.

A MODIFICATION OF LAWRENCE *v.* FOX — BANK CHECKS. — That inconsistencies are pretty sure to follow when courts adopt a rule fundamentally wrong in principle is well illustrated by the difficulties which are being experienced by those courts which have adopted the rule of *Lawrence* v. *Fox* (20 N. Y. 268), namely, that a promise by A. to B. to meet B.'s debt to C. will support an action by C. against A., although C. was not a party to the contract. Such an action would not have been tolerated by the old common law, but the doctrine has gained a foothold in many of our jurisdictions. (See 8 HARVARD LAW REVIEW, 93; 9 HAR-